



VIRGINIA REAL ESTATE BOARD

VREB *SPEAKING*

www.dpor.virginia.gov

Spring 2009

Message from the Chair



Carol F. Clarke

Greetings from the Virginia Real Estate Board!

This is our second issue of *VREB Speaking* to be delivered electronically. Many of you inquired as to why we can no longer mail the newsletter or send it directly to your e-mail address. With the economic downturn, Governor Kaine in January halted state expenditures on several printed items, including our newsletter. Even if you were willing to pay an extra fee to receive the newsletter by mail, at this point we cannot do that.

Eventually we hope to be able to send the newsletter directly

to your email address. Unfortunately DPOR does not have an information system that can collect and store email addresses for use in this manner. DPOR is in the process of updating its information system to one that will allow us to collect your email addresses. Our hope is that within two years *VREB Speaking* will be sent directly to your email address. For now, please go the Board's website at http://www.dpor.virginia.gov/dporweb/reb_main.cfm to retrieve the current edition of *VREB Speaking* as well as archival issues.

On April 21, 2009, the Board's Regulatory Review Committee (the Committee) met to begin the process of reviewing our rules and regulations. The current rules and regulations went into effect on April 1, 2008. The entire regulatory review process usually takes two to three years, so we hope to have updated regulations in place no later than April 2011. Board Member Sharon Parker Johnson of South Hill chairs this Committee and she welcomes your input. The Board would like to know which regulations you think need to be added, eliminated or changed. Your feedback during this process is extremely important to us. Please email Sharon or me at REBoard@dpor.virginia.gov with any comments.

(Continued on Page 10).

Virginia Real Estate Board
Perimeter Center, Suite 400
9960 Mayland Drive
Richmond, VA 23233
804-367-8526

Timothy M. Kaine
Governor

Patrick O. Gottschalk
Secretary, Commerce & Trade

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2009 Meeting Dates

May 14, 2009
July 9, 2009
September 17, 2009
November 19, 2009

All meetings are held on the Second Floor of the Perimeter Center at the above address.

BOARD MEMBERS

Carol F. Clarke, Chair
Charlottesville
Licensee Member
Four-year term ends on 6/30/12

Byrl P. Taylor, Vice-Chair
White Stone
Licensee Member
Four-year term ends on 6/30/11

Nathaniel Brown
Charlottesville
Citizen Member
Four-year term ends on 6/30/12

Judith L. Childress
Martinsville
Licensee Member
Four-year term ends on 6/30/12

Marjorie Clark
Richmond
Citizen Member
Four-year term ends on 6/30/10

Florence Daniels
Alexandria
Licensee Member
Four-year term ends on 6/30/10

Scott M. Gaeser
Manakin-Sabot
Licensee Member
Four-year term ends on 6/30/10

Sharon Parker Johnson
South Hill
Licensee Member
Four-year term ends on 6/30/12

R. Schaefer Oglesby
Lynchburg
Licensee Member
Four-year terms ends on 6/30/09

DPOR Staff

Jay DeBoer, Director

Mark Courtney, Deputy Director
Licensing & Regulation Division

Nick Christner, Deputy Director
Compliance & Investigations Division

Steven Arthur, Deputy Director
Administration & Finance Division

Lizbeth Hayes, Director
Fair Housing Office

Trisha Henshaw, Executive Director
Common Interest Community Board

**Real Estate Board Staff**

Christine Martine
Executive Director

Kevin Hoeft
Education Administrator

Maryanne Woo
Licensing Supervisor

Emily Trent
Administrative Assistant

Board Contact Information

Executive Director - 804-367-8552

Licensing Section - 804-367-8526

Education Section - 804-367-2406

Fax Number - 804-527-4298

E-mail - REBoard@dpor.virginia.gov

Web - www.dpor.virginia.gov

DPOR Main Number - 804-367-8500

Complaints Section - 804-367-8504

Common Interest Community Board- 804-367-8510

2009 General Assembly Report

Legislative Changes Affecting the Virginia Real Estate Board

The 2009 General Assembly passed, and the Governor signed, several bills affecting the Real Estate Board. All of these laws will go into effect on July 1, 2009. Brief descriptions of the legislation are provided below. To view the full text of the statutory changes, visit the Virginia Legislative Information System at <http://leg1.state.va.us> and search by bill number.

HB 1856 requires the Real Estate Board to amend the *Residential Property Disclosure Statement* to include disclaimer language regarding storm water detention facilities.

HB 2040 clarifies that an attorney cannot receive compensation for referring clients to real estate licensees, unless the attorney is licensed as a real estate broker or salesperson.

HB 2541 requires DPOR to obtain criminal history record information for first-time real estate license applicants, and requires real estate salespersons and brokers to state upon license renewal that they have no criminal convictions not previously disclosed.

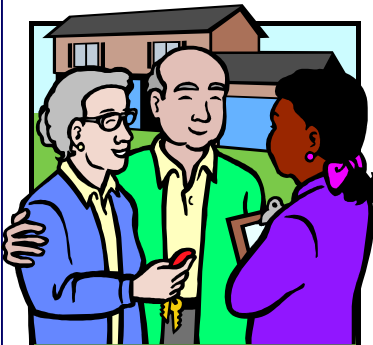
HB 2568 amends the Consumer Real Estate Settlement Protection Act (CRESPA) to expand real estate contract disclosure – for four or fewer residential dwellings – to include a prohibition on (1) variation by agreement and (2) the seller requiring use of a particular settlement agent.

SB 938 amends CRESPA to make each licensing authority – Virginia State Bar, State Corporation Commission, or Real Estate Board – responsible for registering its own settlement agents.

SB 1031 exempts from Virginia licensure any out-of-state broker or salesperson (properly licensed in another state) who assists an out-of-state client with obtaining commercial real estate in the Commonwealth. Such out-of-state brokers or salespersons would be allowed to receive compensation from a Virginia-licensed broker.



Fair Housing



The Fair Housing Board administers and enforces the Virginia Fair Housing Law, although the Real Estate Board is responsible for fair housing cases involving real estate licensees or their employees. Each board investigates housing discrimination through the Virginia Fair Housing Office at the Department of Professional and Occupational Regulation. All fair housing cases must attempt conciliation – an alternative dispute resolution approach using informal negotiation. Successful conciliation agreements are public unless both parties request and agree to a confidentiality clause. If conciliation is unsuccessful in resolving the complaint, the Board determines whether reasonable cause exists to support a charge of discrimination. In cases where the Board determines reasonable cause and issues a charge of discrimination, the Office of the Attorney General brings civil suit in circuit court seeking relief for the complainant. The following case represents a fair housing action rendered by the Real Estate Board at its March 2009 meeting:

Action

Conciliation Agreement

Case Number

2009-01661

Case Name

Bessie Scott v. Morton G. Thalheimer, Inc., Sabrina Stolz and Paul Silver, Richmond, VA

Don't Misrepresent or Omit - Include ALL Contract or Agreement Terms By Byrl P. Taylor, Board Member

The Real Estate Board (the Board) recently considered a number of cases where the Board determined a licensee committed Misrepresentation or Omission by violating 18 VAC 135-20-300.6 of the Board's Regulations. In these cases, the licensee "failed to include the complete terms and conditions of a real estate transaction in any lease or offer to purchase."

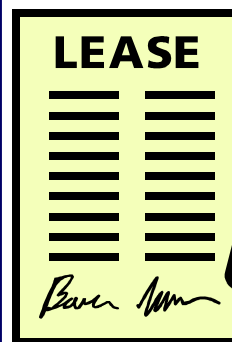


Most of these cases appear to be the result of a licensee's lack of knowledge or bad business practices. Regardless of the reason, the common denominator in these cases is the written terms and conditions of the prospective real estate transaction do not match the actual transaction - and this constitutes a violation. Brokers and salespersons must take care to ensure the written terms and conditions of their real estate transaction documents mirror the actual transaction.

In one recent case, a lease-purchase agreement required both a security deposit for the lease of the property and an escrow deposit for the prospective purchase of the property. The licensee only collected the escrow deposit for the prospective purchase and assumed it would also serve as the security deposit for the lease of the property. The tenant/buyer subsequently did not purchase the property, failed to make monthly rental payments, and damaged the property while living there before being evicted. Because the licensee failed to collect the security deposit for the lease of the property, the owner/seller incurred greater harm when the transaction dissolved.

In another case, a licensee served as a dual agent in a prospective purchase/rent back transaction where the seller was facing foreclosure and the licensee arranged for a buyer who agreed to purchase the property on the condition the seller would rent back the property from the buyer after the sale. The sales contract was signed by both seller and buyer, but the licensee failed to provide them with a lease agreement to sign when they signed the sales contract. The licensee intended to have the buyer (landlord) and seller (tenant) sign a lease agreement at settlement, which never occurred as the sellers failed to attend the settlement meeting. The oral terms of the entire real estate transaction included the sale and subsequent lease of the property and the lease agreement should have been signed by both parties at the same time they signed the sales contract.

In a third case, a licensee entered into a rental agreement to serve as a property manager for a home owner. The rental agreement indicated that the licensee would collect a security deposit from a prospective tenant, but the



agreement failed to designate who would hold the security deposit. The licensee then, acting as the owner's agent, entered into a deed of lease with a lessee and collected a security deposit. However, the deed for lease did not state

that a security deposit was collected or who would hold the security deposit. This omission by the licensee placed the home owner at risk.

Real estate transactions range from being fairly simple to exceedingly complex, and all Board licensees must protect their clients and the public by ensuring that each transaction is expressed clearly and completely in the written documents for each transaction.

Call Miss Utility at 811 Before Installing Real Estate Signs

By Ashley Mansfield, Virginia State Corporation Commission

Adopted thirty years ago, the Virginia Underground Utility Damage Prevention Act (the Act) was passed by Virginia legislators to address the responsibilities of all stakeholders in preventing damage to underground utility lines. Since then, with the help of all stakeholders, Virginia has made great strides in becoming a model for other states. Unfortunately, recently the Division of Utility and Railroad Safety (Miss Utility) has seen damage to utility lines caused by the installation of real estate signs.



Many real estate signs are placed in front property areas to increase visibility and are often placed on utility easements. Utility companies use these easements to bury their facilities that provide service to Virginia homes and businesses. Excavating to install real estate signs without following the Act's requirements may result in damaging an underground utility line. Such damage can cause far-reaching consequences from loss of life or injuries, to economic or environmental damage, liability claims and civil penalties. Real estate licensees are obligated to encourage the company or individual that installs their signs to comply with Virginia law.

"Dig with C.A.R.E.—Keep Virginia Safe!" is a message established by the Virginia State Corporation Commission (SCC) to assist in educating Virginia citizens about the Act's requirements.

In short, the acronym **"C.A.R.E"** stands for:

C - Call Miss Utility at 811 before you dig. Your Miss Utility ticket's life is fifteen (15) working days beginning at 7:00 a.m. the following working day after Miss Utility is notified. A "working day" means every day, except Saturdays, Sundays or legal state and national holidays.

A - Allow the required time for marking.

The waiting period is 48 hours and begins at 7:00 a.m. the next working day after you contact Miss Utility. This does not include Saturdays, Sundays or legal state and national holidays.

R - Respect and protect the marks.

Marking underground utility lines is the way utilities show the approximate horizontal location within two feet of either side of their facilities. It is the excavator's responsibility to protect and preserve the markings from the time the excavation begins until markings are no longer needed for the proper and safe excavation near the utility lines.

E - Excavate carefully.

Prior to excavating, conduct a site inspection that includes verifying the correct location, verifying locate markings, and, to the best of your ability, checking for clear evidence of unmarked utility lines. Additionally, when excavating within two feet on either side of a staked or marked location of an underground utility line such steps include, but may not be limited to, exposing the utility to its extremities by hand digging to see where the utility line is located, not using mechanized equipment within two feet of the exposed utility line, and protecting the utility from damage.



Preventing damage to underground utility lines is the responsibility of all stakeholders. For more information regarding Virginia's damage prevention program, contact the SCC's Division of Utility and Railroad Safety at 1-800-552-7945 or 804-371-9980 or visit our website at: www.state.va.us/scc/division.urs.

Foreclosures, Short Sales and REO: Who Must Disclose What, and When, and to Whom?

By Lawrence E. Marshall, II, Virginia Association of Realtors, Special Counsel

There is a great deal of confusion arising from our roiled real estate market about the disclosure obligations of the various participants in a deal. Precise understanding of the law here is critical. Those who remain ignorant of the requirements of the law will surely get what's coming to them.

So herewith a taxonomy of answers to the most common questions I get these days about property-condition and deal-specific disclosure requirements.



Lenders

(a) Lenders conducting a foreclosure sale are not obligated to deliver the Disclosure Statement required by the Residential Property Disclosure Act, the Lead Paint disclosure, nor the POA/condo information packet.

(b) Lenders selling REO (property already taken back in foreclosure), however, must provide the LBP disclosure and the POA/condo information packet, but do not have to provide the Disclosure Statement.

Listing Agents

(a) With regards to the obligation to disclose material adverse facts pertaining to the physical condition of the property, listing agents have the same obligations with regard to REO and short sale properties as they do to more routine resales: they must disclose in writing the material adverse facts of which they are actually aware.

(b) As to the fact that the seller is in a likely short sale, and will need the lender's approval, listing firms are bound by their statutory duty to preserve client confidences as to all personal and financial information about their clients

unless their clients waive the confidentiality. Multiple listing services may not require that listing agents violate this duty, but may require sellers to waive the privilege as a condition of having access to the MLS. Whether the administrative convenience afforded by this disclosure to buyers and buyer agents is worth the damage it can do to some sellers is a matter of debate, and has been resolved in different ways around the state. MRIS in Northern Virginia, for example, does not require such disclosure, but REIN in Hampton Roads does.

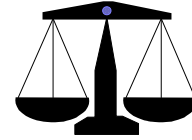
Sellers

(a) As to the physical condition of the property, the Disclosure Statement embodies the seller's disclosure obligation. Common law rules continue to apply as to fraud and concealment. In short, most sellers must give the Disclosure Statement and may remain silent as to virtually all known defects in the property. However, they may not take steps to conceal such defects from discovery.

(b) As to POA and condo information packets, sellers are obligated to deliver these as set forth in the relevant statutes. In addition to the recent statutory changes, there are several important things for us to remember about how they work. First, the buyer **may not waive** the right to receive the packet, **nor may buyer and seller's rights and obligations as to the packet be modified even by the written agreement of buyer and seller.** (See, for example, Sections 55-509.4F, and 55-79.41:1.) This means that lender provisions in contracts for the sale of REO whereby buyers waive rights as to POA and condo packets are thoroughly unenforceable. Second, if a development is under the POA Act but no association has been formed, the owner – whether a developer or lender selling REO – may deliver a written notice stating that no packet will be available and this has the effect of delivery of a packet, that is, the termination clock begins ticking for the buyer.



DISCIPLINARY ACTIONS



The Real Estate Board (the Board) licenses or certifies real estate salespersons, brokers, firms, proprietary schools and pre-license instructors. If a complaint is filed against a licensee who is subject to the laws and regulations of the Board, the complaint is reviewed by the Compliance and Investigations Division (CID) of DPOR to determine if a violation of these laws or regulations may have occurred. If there is probable cause of a violation, an investigation is initiated. If the investigation reveals that one or more violations may have occurred, the licensee receives notice to appear at an informal fact-finding conference (IFF) to address these alleged violations.

In some cases the licensee may be offered a pre-IFF Consent Order. A Consent Order is an agreement between the licensee and the Board consisting of specific violations and sanctions. Pre-IFF Consent Orders eliminate the time and expense associated with conducting an IFF.

If an IFF is held, a recommendation from the IFF hearing officer consisting of proposed violations and sanctions is submitted to the Board for consideration at its next meeting. The Board can take the following disciplinary actions against a licensee: assess a monetary penalty; suspend or revoke a license; place an individual on probation; require additional education; or deny renewal. A licensee can continue to practice throughout the disciplinary process until the Board either revokes or suspends his license.

THE FOLLOWING DISCIPLINARY ACTIONS RENDERED BY THE BOARD AT ITS MARCH 2009 MEETING CAN BE VIEWED AT: www.dpor.virginia.gov. Click on "License Lookup." Then click on "Search Disciplinary Actions Occurring since April 1, 2002." Then enter the Case Number in the blank "Search" box. Then click on the "Search" button. Then click on the highlighted "File Number." The Order and Report of Findings for that case will appear.

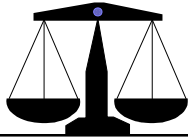
<u>Case Number</u>	<u>Licensee</u>	<u>Violations & Sanctions</u>
2008-02723	Vuong Q. Nguyen Virginia Beach, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$4000, License Revocation
2008-04004	Jose M. Zepeda Springfield, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$1600, License Revocation
2008-01779	Cynthia A. Joskowiak Barboursville, VA	18 VAC 135-20-300 - Misrepresentation/Omission Fined \$400, 3 Hours of Continuing Education
2009-01403	Ralph B. Cooley Ashland, VA	18 VAC 135-20-300 - Misrepresentation/Omission Fined \$400, \$150 Board Costs, 8 Hours of Continuing Education
2008-02725	Patrick T. Hogan Roanoke, VA	18 VAC 135-20-185 - Maintenance/Management Finan. Records 18 VAC 135-20-190 - Advertising by Licensees 18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-270 - Conflict of Interest 18 VAC 135-20-300 - Misrepresentation/Omission 18 VAC 135-20-310 - Delivery of Instruments \$150 Board Costs, License Revocation
2008-03504	Damaris J. Gonzalez McLean, VA	18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-310 - Delivery of Instruments Fined \$1500, \$150 Board Costs, 4 Hours of Continuing Education
2009-00742	Benjamin F. Steward Washington, DC	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) Fined \$1000, \$150 Board Costs, 8 Hours of Continuing Education



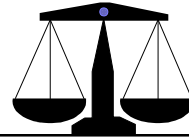
DISCIPLINARY ACTIONS (Cont.)



<u>Case No.</u>	<u>Licensee</u>	<u>Violations & Sanctions</u>
2009-01204	Ronald D. White Littleton, NC	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) \$150 Board Costs, License Revocation
2008-01669	Laura J. Sampson Franktown, VA	18 VAC 135-20-300 - Misrepresentation/Omission §54.1-2131.A.4 - Failure to Exercise Ordinary Care Fined \$1250, 8 Hours of Continuing Education
2009-00959	Shirley K. Richardson Sparta, NC	18 VAC 135-20-180 - Maintenance/Manage. Escrow Accts (2 counts) 18 VAC 135-20-260 - Unworthiness & Incompetence §54.1-2139.A - Failure to Disclose Dual Representation Fined \$1850, \$150 Board Costs, 16 Hours of Continuing Education
2008-04646	Suresh Pendem Chantilly, VA	18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) Fined \$500, License Revocation
2008-04770	Tina M. Condon Rochelle, VA	18 VAC 135-20-250 - Failure to Respond to Board Inquiry 18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$2300, License Revocation
2009-00618	Joanne McElroy-Hall Virginia Beach, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$2500, \$150 Board Costs, 3 Hours of Continuing Education
2009-00617	Earline S. Owens Virginia Beach, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$750, \$150 Board Costs, 3 Hours of Continuing Education
2008-03271	Steven Krever Virginia Beach, VA	18 VAC 135-20-180 - Maintenance/Manage. Escrow Accts (2 counts) 18 VAC 135-20-185 - Maintenance/Management Finan. Records 18 VAC 135-20-260 - Unworthiness & Incompetence (2 counts) \$150 Board Costs, License Revocation
2009-00659	Gregory J. Josephs Ashburn, VA	18 VAC 135-20-260 - Unworthiness & Incompetence Fined \$500, \$500 Board Costs, 8 Hours of Continuing Education, License Probation for 2 Years
2008-04746	Emily Cobb Russell Yanceyville, NC	18 VAC 135-20-170 - Maintenance of License 18 VAC 135-20-180 - Maintenance/Management Escrow Accounts 18 VAC 135-20-185 - Maintenance/Management Finan. Records 18 VAC 135-20-300 - Misrepresentation/Omission §54.1-2135.A.1 - Failure to Perform According to the Terms of a Property Management Agreement Fined \$3000, 7 Hours of Continuing Education, License Revocation
2008-04460	Emily Cobb Russell Yanceyville, NC	18 VAC 135-20-180 - Maintenance/Manage. Escrow Accts (4 counts) 18 VAC 135-20-185 - Maintenance/Management Finan. Records 18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-300 - Misrepresentation/Omission Fined \$4000, 4 Hours of Continuing Education, License Revocation
2007-01584	David A. Lindsey Virginia Beach, VA	18 VAC 135-20-180 - Maintenance/Management Escrow Accounts Fined \$1000, 7 Hours of Continuing Education
2009-00369	Adnan T. Mirza Springfield, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, 8 Hours of Continuing Ed., License Revocation



DISCIPLINARY ACTIONS (Cont.)



<u>Case No.</u>	<u>Licensee</u>	<u>Violations & Sanctions</u>
2008-02322	Julie A. Tremblay Stafford, VA	18 VAC 135-20-180 - Maintenance/Manage. Escrow Accts (2 counts) 18 VAC 135-20-210 - Failure to Disclose Interest 18 VAC 135-20-260 - Unworthiness & Incompetence 18 VAC 135-20-300 - Misrepresentation/Omission 18 VAC 135-20-310 - Delivery of Instruments Fined \$6500, License Revocation
2008-04085	Young H. Han Fairfax, VA	18 VAC 135-20-260 - Unworthiness & Incompetence \$150 Board Costs, License Revocation
2008-04248	Mohamed L. Koroma Stafford, VA	18 VAC 135-20-310 - Delivery of Instruments Fined \$500, \$150 Board Costs
2009-01281	Alex J. Quiroz Springfield, VA	18 VAC 135-20-250 - Failure to Respond to Board Inquiry \$150 Board Costs, License Revocation
2009-00197	Gabriel M. Villarreal Fairfax, VA	18 VAC 135-20-260 - Unworthiness & Incompetence §54.1-2131.A.4 - Failure to Exercise Ordinary Care Fined \$1000, Broker License Revocation with simultaneous issuance Of Salesperson License

Real Estate Board Education Committee 2008 Statistics

<u>Application Type</u>	<u># Reviewed</u>	<u># Approved</u>	<u># Denied</u>
Proprietary Schools	22	22	0
Previously Approved CE Courses	138	138	0
Original CE Courses	669	666	3
Previously Approved PLE Courses	211	211	0
Original PLE Courses	437	434	3
Limited Service Agency Courses	24	24	0
Pre-license Salesperson Courses	7	7	0
Pre-license Broker Courses	4	4	0
Pre-license Course Instructors	92	85	7
Previously approved CE/PLE Instructors	149	149	0
Totals	1753	1740	13

Other Business

Guidance Documents reviewed by the Committee and approved by the Board: 1) Guidance Document requiring all Board-approved pre-license courses be taught by Board-certified Pre-license Instructors; 2) Guidance document clarifying the types of documents instructor applicants can submit; and 3) Guidance document clarifying CE/PLE reports must be submitted to the Board within five business days.

Policy Questions addressed by the Committee: 1) ARELLO Distance Education Certification Program; 2) Using *Code of Virginia* CE categories when using education as a disciplinary action sanction; 3) No retroactive approval of CE/PLE course except under extraordinary circumstances; 4) Should all education required as part of a disciplinary action be completed in a classroom format?; and 5) Should a certain percentage of all CE courses for license renewal be completed in a classroom setting?

Initiatives: 1) Electronic Continuing Education/Post License Education Course Application Process initiated in January 2008 and implemented in July 2008.

Message from the Chair (Continued from Page 1)

In the current climate of foreclosures and short sales, it is a good idea to learn as much as you can about dealing with these challenging situations. We have had some questions about the long process of negotiations involved and the frustrations of the buyers in these situations. It is wise to remember that you still must submit all offers to the seller, which in many of these cases is the bank. Banks tend to do business from 9:00 to 5:00, Monday through Friday, and their responses in situations of foreclosure and short sales are slow and the process is long, drawn out and tedious. To prepare the buyer, it would be prudent to explain how complicated and lengthy the process can be. If you do not feel prepared to deal with short sales, please confer with your broker, take a course in short sales or refer the business to someone with the knowledge and competency to handle these types of challenges.

One benefit of delivering *VREB Speaking* "online" is that we are not limited to a certain number of pages. You will notice that this issue is full of timely articles which we hope will assist you in conducting your real estate business every day.

Carol Clarke, Chair